June 26, 1997

Re: Response to Comments from Sevier River Meetings

Dear Water User:

First, let me thank you for your attendance at the public meetings held on March 19 and 20, 1997, in Panguitch, Richfield, Manti, and Delta. Your comments and interest in the water resources of the Sevier River basin are greatly appreciated.

At the meetings, we reviewed the water rights and hydrologic conditions on the system and outlined the problems I see facing us in the future management of the water resources of the Sevier River drainage. At that time, a May 15, 1997, deadline was set to have written comments submitted to this office. The purpose of this letter is to formally respond to those comments.

Eleven written comments were received and they covered a wide range of topics. As might be expected, the comments generally fell along three lines of thought; those which favored a restrictive approach to solving the problem, those which favored fewer restrictions, and those who suggested potential solutions.

Comments favoring more restrictions

The most frequent comments were on the side of more restrictions. Foremost was that the continued granting of new water rights for single family domestic wells in rural areas (0.015's) interferes with existing water rights by lowering ground-water levels, reducing the amount of recharge to the aquifer system, and degrading water quality. Our policy permitting these 0.015's was restricted to the inside use of one family, the irrigation of 0.25 acre of lawn and/or garden, and the watering of a nominal amount of livestock. This policy was designed to allow people to acquire water for a home where no other source of water was available. The average diversion of these 0.015 wells is about 1.5 acre-feet per year (af/yr). Approximately 0.45 af/yr is consumed and the remaining 1.05 af/yr is potentially returned to the river system or

the aquifer through septic systems and the percolation of unconsumed irrigation water. It is the issue of these small wells that goes to the heart of the problems on the Sevier River. Individually, these wells cause a very small impact on the hydrologic system. This is known, in legal terms, as a *de minimis* impact. However, as explained at the meetings, if enough of these *de minimis* impacts occur they will cause a measurable effect. According to studies by the United States Geological Survey (USGS), the connection between the surface streams and the aquifer system means a measurable effect will be seen by a decrease in the flow of the Sevier River and its tributaries. Since the Sevier River is fully appropriated during the late summer months, senior water rights could be impaired. By statute, I am bound to protect those senior rights. The solution is to find a workable way of allowing people to drill wells to provide water for their homes and also permit the changing of water uses without impairing prior rights.

Another comment contended that there are already too many of these 0.015's and they are too difficult to police. This lack of policing makes it difficult to prevent an enlargement of the right. I partially agree with this comment. It is true that I do not have the resources to police every water right in the state. It is also true that our water right system is in many ways self-policing. This self-policing comes by virtue of the fact that to get water from where it occurs to where it is needed takes money. Hence, economics and the vigilance of other water users make the policing effort less onerous.

Many said that the basin should be closed to further appropriations, and the ability of current water right holders to change or exchange their rights to domestic use should be restricted. Again, I believe that there is still a small amount of unappropriated ground-water in the Sevier River Basin, but only at certain times of the year. Closing the basin would be the easy way to handle the problem, but would deny the public the use of a valuable resource. I do not agree that restricting the changing or exchanging of water rights is the answer. Under Utah law, a water right is a property right with the applicable rights and privileges attached. Within the bounds of the law, I cannot restrict the changing of water use from irrigation to domestic without running afoul of the Constitution's "taking clause".

<u>Comments favoring less restrictions</u>

On the other hand, there were those who believed that future

appropriations should be continued to allow economic growth, to limit the liability of realtors, and protect the value of property which owners might wish to sell.

It is not within the responsibilities of my office to promote economic growth. While the law does allow me to consider public trust in making decisions, my prime responsibility is to allow the water resources to be used to their maximum extent, protect prior rights, and administer the law impartially.

Some, in the real estate business, fear that halting new appropriations will open them to liability for having told their customers that 0.015's are available. They suggest that those transactions closed prior to March 20, 1997, be allowed to get 0.015's under the old policy. If this is the case, I would consider this proposal as a viable option.

Others expressed concern that halting new appropriations would lead to a decline in property values to those wishing to sell their land, the theory being that the unavailability of 0.015's will make these properties less attractive to potential buyers. Be assured that any new policy instituted will have a provision to ensure that water can be obtained, but it may require the acquisition of an existing water right and filing a change application to cover the new development.

Comments proposing possible solutions

There were three comments which I found of particular interest. In one comment, it was stated that if irrigation water rights are changed to domestic use, that for every two units of water changed, one unit from the former source be allowed to flow to the Sevier River or one of its tributaries as "return flow" to satisfy downstream rights; the other unit from the former source, minus the former depletion, would be artificially recharged to the aquifer to maintain water levels. The depletion would then be transferred to the new source. This idea of artificial recharge is not new in Utah and is an option worth investigating. The biggest question which must be answered in this regard is "Who will administer the operation?" In most cases, these projects could be administered by a water conservancy district, special service district, county government, or a municipality. It is definitely an idea that deserves more consideration.

Another comment suggested that domestic water in rural areas be

developed from surface sources. I must assume this means the development of rural water systems with their attendant treatment and delivery facilities. This idea also has a great deal of merit, providing the operational and administrative details can be worked out. Also, would a rural water delivery system include a rural sewage collection and treatment system? It is not in the best interest of the people of the Sevier River Basin to have a high density of wells and septic systems spread across the valley, especially in areas where a high water table exists.

A third comment stated that irrigators could forego their first two days of water at the start of irrigation season. This water would physically be allowed to flow to the Sevier River to satisfy downstream rights while the "depletion" would be placed into a pool which a canal company would sell to those seeking domestic water. This suggestion has merit, but I do not favor using water from the first two days of the irrigation season. The early season diversions go almost exclusively to building up soil moisture with little or no consumptive use occurring. If the "pooled" water was obtained by foregoing diversions later in the season, when consumptive use is occurring, this idea could be workable. Again, questions dealing with operation and administration would have to be worked out.

Other comment

One comment was received which fell outside of these three general areas. It was stated that by closing the basin to new appropriations we were denying the landowner the right to use the water under his property. What the commentator was stating is known as the riparian doctrine of water rights. The Utah State Constitution and Utah water law specifically rejects this riparian doctrine and declares all waters within the state as the property of the state. The granting of a water right only gives the water right holder the right to place this public property to a beneficial use.

Summary

With these comments and suggestions in mind, be assured that all will be given serious consideration as we seek a solution. At this point, I wish to discuss the challenges of this matter from my perspective as the administrator who must protect existing water rights, while at the same time allowing the water resources of the basin to be used.

The Sevier River is a highly developed and very efficient system. During above average precipitation periods there is surplus water within the system. On a seasonal basis, there are times when the flows are fully appropriated and also periods when there is some unappropriated water. In drought years, the system experiences shortages and many late priority surface water rights are shut off because there is not enough water. Given the relationship between ground-water and surface water sources, water distribution is further complicated. Typically, a well located some distance from a surface stream can withdraw water from the aquifer and the effect may not be noticeable at the stream for several months. With the large storage reservoirs on the system, there is a buffering of these short term pumping effects. However, during extended drought periods, the potential conflict between surface water rights and ground-water rights becomes very critical. It is very difficult for the river commissioner (and disruptive to the homeowner) to shut off diversions from a small domestic well that is the owner's only available water supply. Yet, at the same time, the well could be effecting the water supply available to senior water rights and, granted it may be a *de minimis* amount, under the prior appropriation doctrine the well should cease diverting water.

The challenge facing us is this: how do you allow small domestic wells to be drilled and at the same time protect prior surface water rights? Perhaps it requires a cooperative approach. Such an approach should involve the prior water right holders. A mechanism needs to be identified which provides new well owners a reliable water supply and provides compensation to those effected water rights during those periods when there is no unappropriated water.

Again, I thank you for your continued interest in addressing the problems and opportunities associated with the water resources of the Sevier River Basin. I look forward to meeting with you in the near future to discuss possible solutions.

Sincerely,

Robert L. Morgan, PE
State Engineer

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